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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,488	06/12/2001	Dietmar Sundermann	14XZ00092	5572

7590 12/19/2003

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EXAMINER

MCCALL, ERIC SCOTT

ART UNIT	PAPER NUMBER
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2855

DATE MAILED: 12/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/879,488

Applicant(s)

SUNDERMANN ET AL.

Examiner

Eric S. McCall

Art Unit

2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 13-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9, 20-26, 35, 38-45 and 48-53 is/are allowed.
- 6) ☒ Claim(s) 13-19, 27-34, 36, 37, 46 and 47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

**COLLIMATION DEVICE, RADIOLOGY
APPARATUS, TEST KIT AND METHOD OF
TESTING A RADIOLOGY APPARATUS**

FINAL OFFICE ACTION

In response to the Applicant's amendment (paper no. 7) dated Oct. 07, 2003.

DRAWINGS

In response to the Applicant's remarks pertaining to drawing objection as raised in the previous office action (7/08/03), the figures in question have been read in light of the Applicant's comments and said objection to the drawings has been withdrawn.

However, although the formal drawing objection "by the Examiner" has been withdrawn, the Examiner asks the Applicant to amend figures 8 and 9 by clearly labeling the block diagrams thereof because if the instant application matures into a patent, such labeling helps Examiners in the future conduct prior art searches by allowing for a quick determination of that patent's taught

subject matter and in the end may help prevent the Applicant's own work from being infringed.

Nonetheless, the Applicant's attention is directed to the enclosed "Form PTO-948" in which "the Draftsperson" (not the Examiner) has formally objected to the drawings because of the unlabeled boxes of Figs. 8 and 9.

ABSTRACT

In response to the Applicant's amendments, the objection to the abstract as stated in the previous office action (7/08/03) has been overcome.

CLAIMS

Objections

In response to the Applicant's amendments, the objection to the claims as stated in the previous office action (7/08/03) has been overcome.

35 U.S.C. § 112

(First Paragraph)

In the previous office action, the Examiner rejected claims under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The Examiner asked the Applicant to point out where the claimed subject matter in the claims questioned was supported.

While the Applicant has provided guidelines, the Applicant has stated that where the specification provides general guidelines, one of ordinary skill in the art would “know what is meant”. In essence, the Applicant is stating that at least some of the subject matter in question is inherent. The Examiner points out that it is improper to argue inherency of subject matter rejected under 35 USC 112, first paragraph.

In response to the Applicant’s guidelines, the following applies:

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 13-19, 27-34, 36, 37, 46, and 47 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter

which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention because said claims contain subject matter which can not be found to be clearly supported by the originally filed disclosure.

Claim 13 sets forth a test of operating characteristics or parameters of a means for receiving in which support therefore could not be found in the originally filed disclosure. Nothing suggesting “a test of a means for receiving” could be found in the passages/figures cited by the Applicant.

Claim 14 sets forth a means for testing spectral quality in which support therefore could not be found in the originally filed disclosure. Nothing suggesting “testing for spectral quality” could be found in the passages/figures cited by the Applicant.

Claim 15 sets forth a means for calibrating radiation dose in which support therefore could not be found in the originally filed disclosure. Nothing suggesting “calibrating radiation dose” could be found in the passages/figures cited by the Applicant.

Claim 36 sets forth a means for testing spectral quality in which support therefore could not be found in the originally filed disclosure. Nothing suggesting “testing spectral quality” could be found in the passages/figures cited by the Applicant.

Claim 37 sets forth a means for calibrating radiation dose in which support therefore could not be found in the originally filed disclosure. Nothing suggesting “calibrating radiation dose” could be found in the passages/figures cited by the Applicant.

(Second Paragraph)

In response to the Applicant’s comments, the rejection of claims 1-8, 13-41, and 46-53 under 35 U.S.C. 112, second paragraph, as stated in the previous office action has been overcome.

The Examiner does note that the phrase “capable of being” (claim 1) as raised in the Examiner’s rejection and responded to by the Applicant has or is not deemed as being “functional language” for said rejection was based on the definite relationship of the collimation device with the means for emission and the control unit, not the function of the collimation device. Nonetheless, the rejection thereof has been withdrawn.

35 U.S.C. § 102

In response to the Applicant’s arguments regarding the rejection of claims 1-5, 7-9, 13-20, 22, 23, 25-27, 29, 30, 32, 35-42, 44-46, 48, 49, and 51 under 35 U.S.C. 102(b) as being anticipated by Oikawa (5,625,661), said arguments have been considered and have been found to be persuasive in view of the following interpretations:

Claim 1 has been found to be allowable over the prior art because the prior art fails to teach or suggest a collimation device to direct an energy beam in a given direction and at a given solid angle, comprising:

a “means for” (interpreted in view of 35 USC 112, sixth paragraph) testing operation of an assembly formed by a “means for” (35 USC 112, sixth paragraph) emission of an energy beam and the collimation device and “means for” (35 USC 112, sixth paragraph) receiving the energy beam wherein the means for testing comprises:

- a “means for” (35 USC 112, sixth paragraph) providing a plurality of test tools; and
- a “means for” (35 USC 112, sixth paragraph) sensing the position of each test tool.

With regards to claim 8, the Examiner disagrees with the Applicant’s comments in the last paragraph on page 21 of said amendment that the elements mentioned and required by claim 8 are not required by claim 1. Claim 1 sets forth the same said elements and thus claim 1 has been interpreted as requiring said elements.

As such ,claim 8 has been found to be allowable over the prior art because the prior art fails to teach or suggest a radiology apparatus, comprising:

a “means for” (interpreted in view of 35 USC 112, sixth paragraph) testing operation of an assembly formed by a “means for” (35 USC 112, sixth paragraph) emission of an energy beam and the collimation device and “means for” (35 USC 112, sixth paragraph) reception of the energy beam wherein the means for testing comprises:

a plurality of test tools; and
a sensor for sensing the position of each test tool.

Claim 9 has been found to be allowable over the prior art because the prior art fails to teach or suggest a test kit comprising:

a “means for” (interpreted in view of 35 USC 112, sixth paragraph) fastening the test kit to a collimation device;

a “means for” (35 USC 112, sixth paragraph) testing the operation of the collimation device wherein the means for testing comprises:

a plurality of test tools with a sensor for sensing the position of each test tool.

All other claims, except those claims directly or indirectly rejected under 35 USC 112, first paragraph, have been found to be allowable over the prior art due to said claims’ dependency on one of claims 1, 8, or 9.

35 U.S.C. § 103

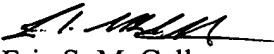
The rejection of claims 6, 24, and 43 under 35 U.S.C. 103(a) as being unpatentable over Oikawa (5,625,661) has been overcome and withdrawn.

CONCLUSION

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Eric S. McCall at telephone number (703) 308-6968.


Eric S. McCall
Primary Examiner
Art Unit 2855
Dec. 16, 2003